CF0000062997

(2)

Division Bench (Criminal)

समक्ष: माननीय उच्च न्यायालय , मध्य प्रदेश, जूडिकेचर, ज ब ल पु र

क्रिमिनल अपील नं॰ 1658/2000

अपीलार्थी :- गिरजाबाई पत्नी श्री लखेश्वर प्रसाद पटैल,
अभियुक्तता उम्र लगभग 45 वर्ष, साकिन मणीपुर (सरखोर)
in Jail थाना कसडोल, जिला-रायपुर (म॰प्र॰)॰

(1655)

Filed on 30/6/2000
by Shri M.K. Mishra Advocate

विरूद्ध

Pls. उत्तरवादी :- मध्य प्रदेश शासन
अभियोजन द्वारा आरक्षी केन्द्र कसडोल,
जिला -रायपुर (म॰प्र॰)

अपील अंतर्गत धारा- 374 (2) दण्ड प्रक्रिया संहिता ॰

(36)

APR

HIGH COURT OF JUDICATURE AT BILASPUR (CHHATTISGAR

Criminal Appeal No.1658 of 2000

Girjabai

Versus

State of Madhya Pradesh (Now Chhattisgarh)

JUDGMENT FOR CONSIDERATION

Sd/-
L.C.BHADOO
Judge
3.12.2006

HON'BLE SHRI JUSTICE DHIRENDRA MISHRA

Sd/-
DHIRENDRA MISHRA
Judge

POST IT FOR PRONOUNCEMENT OF JUDGMENT ON 4th DECEMBER, 2006

Sd/-
L.C.BHADOO
Judge

(37)

HIGH COURT OF JUDICATURE AT BILASPUR (CHHATTISGARH)

DIVISION BENCH: -HON'BLE SHRI L.C. BHADOO AND
HON'BLE SHRI DHIRENDRA MISHRA, JJ.

Criminal Appeal No.1658 of 2000

Girjabai

Versus

State of Madhya Pradesh (Now Chhattisgarh)

Present:

Miss Minu Banerjee, Advocate	For the appellant.
Mr. U.N.S. Deo, Additional Public Prosecutor:	For the State/respondent.

JUDGMENT

(Delivered on 04th December, 2006)

The following judgment of the Court was delivered by L.C. Bhadoo, J.

1. By this appeal under Section 374 (2) of the Cr.P.C. accused Girjabai has questioned legality, correctness of the judgment of conviction and order of sentence dated 2/5/2000 passed by 2nd Additional Sessions Judge, Baloda Bazar, District Raipur, in S.T. No.57/2000 whereby learned Additional Sessions Judge after holding the accused/appellant guilty for commission of offence under Section 302 of the I.P.C., for committing murder of her daughter-in-law namely, Nisha Bai, sentenced her to undergo imprisonment for life & to pay a fine of Rs.1,000/-, in default of payment of fine to further undergo S.I. for 6 months.

2. Prosecution case, in brief, is that on 17-12-99 Rooplal Sahu gave Dehati Nalishi Ex.-P/2 to the Station House Officer, Police Station Kasdol to the effect that he is resident of village Sarkhor. Today he and Kotwar Chamradas were going to Hawaldar, who came in the village in connection with investigation. At that time, they heard the word "Jai Santoshi Maa" from behind, when they turned their faces back side, they saw Girjabai of village Manipur, there were blood spots on her face, she was saying 'I have committed "Kand" (an untoward incident)', she is

going to the police, on which, they enquired from her as to what has happened, she replied that she has committed murder of her daughter-in-law by attacking her with axe and hammer. Kotwar further enquired as to why she has committed murder, on which Girjabai replied that her daughter-in-law was a witchcraft. Kotwar asked him that he is taking care of Girjabai, you find out the veracity of what she has stated. He left for Manipur on bicycle. He went to the house of Girjabai along with Rameshwar, Bahadur, Bisahu, Rajaram, Kaleshwar, Dharam & Kansram, there they saw a girl was standing outside the house of Girjabai. On enquiring about the presence of her father, she replied that her father has gone to the agricultural field, there is nobody inside the house. When he enquired from her about the presence of her mother, she replied that her mother has gone towards Sarkhor, thereafter, they went towards the courtyard of the house & saw that there was blood on the floor of Varandah, daughter-in-law of Girjabai was lying dead in the said Varandah, there were injuries on her head, one hammer, axe and one club of Babool stained with blood were lying on the ground. On further enquiry, daughter of Girjabai informed that her mother has committed the murder, thereafter, he returned and informed Kotwar.

3. Receiving this Dehati Nalishi (Ex.-P/2) Station House Officer, Police Station, Kasdol registered FIR under Ex.-P/2-A for commission of the offence under Section 302 of the I.P.C.. He left for the scene of occurrence and prepared the site plan Ex.-P/4. Clothes of accused Girjabai stained with blood were seized under Ex.-P/5. Axe, hammer and one club of Babool tree were seized under Ex.-P/6. After giving notice Ex.-P/7 to the Panchas, inquest (Ex.-P/8) on the body of Nisha Bai was prepared. The body of Nisha Bai was sent for postmortem examination to the Community Health Centre, Kasdol under Ex.-P/16, Dr. Yogesh Kumar Sharma conducted postmortem on the body of Nisha Bai, prepared postmortem report Ex.-P/22 in which he opined that cause of death was due to head injury and death was homicidal in nature. He also noticed 5 lacerated wounds, 4 incised wounds and one contusion on the head and face of deceased Nisha Bai. He further opined that injuries No.1, 2, 9 and 10 were caused by sharp cutting object and remaining injuries were caused by hard and blunt object. Mastoid bone and left side of mandible were fractured.

4. After usual investigation, charge sheet was filed against the accused in the Court of Additional Chief Judicial Magistrate, Baloda Bazar, who in turn committed the case to the Sessions Judge, Raipur, from where learned 2nd Additional Sessions Judge received the case on transfer for trial.

5. In order to establish the charge against the accused, prosecution examined 14 witnesses. Statement of the accused was recorded under Section 313 of the Cr.P.C. in which she denied the incriminating material appearing against her in the prosecution evidence. She also stated that at the time of the incident she was in agricultural field, she does not know how her daughter-in-law died, when she returned from the agricultural field, she saw the body of her daughter-in-law in the house, on seeing that, she became unconscious. She had also examined DW-1 Santosh and DW-2 Rameshar in defence.

6. We have heard learned counsel for the parties.

7. Miss Minu Banerjee, learned counsel for the accused/appellant has not disputed homicidal death of Nisha Bai. Apart from that, PW-11 Dr. Yogesh Kumar Sharma, who conducted the postmortem on the body of Nisha Bai, has stated that there were 10 injuries on various parts of the head and face. These injuries were ante-mortem in nature. Mandible bone and mastoid bone were fractured. One molar tooth was broken. He has also stated that he examined axe and hammer. It was possible to cause these injuries with axe and hammer. The injuries were serious in nature and death was homicidal. The evidence of PW-1 Rooplal and PW-2 Chamra Das before whom the accused made extra judicial confession also establishes that the death of Nisha Bai was homicidal in nature. Therefore, it is established that the death of the deceased was homicidal in nature.

8. As far as involvement of the accused/appellant in crime in question is concerned, there is no direct or ocular evidence in this case. Conviction rests on the circumstantial evidence i.e.

   (i) extra judicial confession made by Girjabai before PW-1 Rooplal, PW-2 Chamra Das and PW-4 Bhagchand,

   (ii) immediately after the incident PW-1 Rooplal and PW-2 Chamra Das saw blood on the clothes and face of accused,

weapons of offence i.e. axe, hammer and club were found stained with blood.

It is settled law that in order to rest conviction based on the circumstantial evidence, the Court is required to ascertain from the circumstantial evidence as to whether the prosecution has been able to establish the involvement of accused in the crime in question based on the following principles laid down by the Hon'ble Apex Court;

1. the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established;
2. those circumstances should be of a definite tendency unerringly pointing towards guilt of the accused;
3. the circumstances, taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else; and
4. the circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence.

9. Now, we shall proceed to scrutinize the evidence available on record to find out as to whether the prosecution has been able to establish the charge against the accused and whether the evidence led by the prosecution has been stood up to the test laid down by the Apex Court for resting conviction on circumstantial evidence.

10. First circumstance:- As far as this circumstance is concerned, learned counsel for the accused/appellant argued that as per the evidence of PW-1 Rooplal and PW-2 Chamra Das, extra judicial confession was made by accused Girjabai in presence of Hawaldar and Dwarika Prasad Tandon, police officials, therefore, extra judicial confession is hit by Section 25 of the Evidence Act and same is not admissible in evidence.

11. On the other hand, learned counsel for the State/respondent argued that as extra judicial confession made by the accused was not "to" the Police Officer but it was to PW-1 Rooplal and PW-2 Chamra Das, therefore, provisions of Section 25 of the Evidence Act are not attracted.

12. If we look into the evidence of PW-1 Rooplal, he has stated that on the fateful day he along with Kotwar, Chamra Das were going with two police man i.e. Tandon and one head constable Verma, at that time, Girjabai came in the street, she was saying that she has committed murder. On that, police personnel said that she seems to be a mad lady, take her. Thereafter, Girjabai again said that she has committed murder. On enquiry, she further said that she has committed murder of her daughter-in-law, on which, he along with Kotwar took her to Chakki Para Square, we decided that let us go to the residence of Girjabai to find out the veracity of her statement. Thereafter, he along with other persons went to the house of Girjabai and saw that dead body of daughter-in-law of Girjabai was lying in the Varandah in a pool of blood, she was already dead. Near her body one axe, hammer and club stained with blood were lying. On cross-examination by the Government pleader, he has further stated that it is correct that when they looked back after turning their faces, they saw the blood spots on the face and hands of Girjabai, Girjabai said that she has committed Kand (an untoward incident). When they reached to the house of accused, Narayani, daughter of the accused was standing there. On enquiry, she disclosed that her father has gone to the agricultural field and on enquiry about the mother, she disclosed that her mother has gone towards Sarkhor. She further disclosed that her mother has committed the murder. Thereafter, they gave Dehati Nalishi Ex.-P/2. Similar is the evidence of PW-2 Chamra Das. He has stated that on the fateful day at 4 p.m. he along with two police personnel and Rooplal were going, at that time, Girjabai came, saying that she has committed murder and she is going to the police, on which he asked Rooplal that you should go to the village Manipur in order to find out the veracity of the statement made by Girjabai, thereafter, Rooplal went to the house of Girjabai where Narayani was standing and she disclosed the fact. The evidence of PW-1 Rooplal and PW-2 Chamra Das has further been corroborated by the evidence of PW-4 Bhagchand, who has stated that the accused came and disclosed him that she has committed murder of her daughter-in-law. PW-4 Bhagchand has stated that Girjabai came in the village and said that she has committed murder of her daughter-in-law, blood spots were present on her neck, hands and clothes. Therefore, evidence of these witnesses discloses that witnesses PW-1 Rooplal, PW-2 Chamra Das along with two police personnel were going in the village Sarkhor, at that time,

Girjabai came, she was saying that she has committed murder of her daughter-in-law, therefore, the accused made extra judicial confession where the police personnel were present, but she had not made confession "to" the police personnel, as she was saying that she has committed murder of her daughter-in-law and she is going to the police station, therefore, she was not knowing that in these 4 persons some were police personnel. On enquiry, she made extra judicial confession before PW-1 Rooplal and PW-2 Chamra Das. Of course, at that time, per chance two police personnel were also present but she was not aware that they are police personnel that is why she said that she is going to the police. There is no reason to disbelieve the evidence of PW-1 Rooplal, PW-2 Chamra and PW-4 Bhagchand and the defence has not been able to elicit any circumstance in the cross-examination of these witnesses to discredit their evidence. There is nothing on record which suggests that confession was not voluntary or true. Moreover, confession was prompt.

13. Section 25 of the Evidence Act envisages that no confession made "to" a police officer, shall be proved as against a person accused of any offence whereas, Section 26 envisages that no confession made by any person whilst he is in the custody of a police officer, unless it be made in the immediate presence of a Magistrate, shall be proved as against such person. Therefore, in order to attract the provisions of Section 25 it is necessary that confession must be made "to" a police officer, in that case only the same cannot be proved against him.

14. Now, therefore, the question for consideration before this Court is as to whether in the circumstances extra judicial confession made by the accused is hit by Section 25 of the Evidence Act, merely because same was made "in presence of police", as the above extracted provisions of Section 25 of the Evidence Act envisages that any confession made "to" a police officer, shall not be proved against the accused. In this case, confession was not made "to" police, but the same was made to PW-1 Rooplal and PW-2 Chamra Das. The spirit behind the provisions of Sections 25 and 26 of the Evidence Act is that any confession made "to" a police or "in the custody of the police" cannot be used as against the maker for the reason that the police being Investigating Agency, there is every likelihood that they may extract the confession by coercion or by use of third degree methods or there is every chance that out of fear of

beating or harassment by police accused may make confession. In such a case, there will be every chance of failure of justice. The provisions of Section 24 of the Evidence Act which contemplate that when confession appears to the Court has been caused by any inducement, threat or promise having reference to the charge against the accused person that is why Section 24 of the Evidence Act envisages that confession caused by inducement, threat or promise is irrelevant in the criminal proceedings. Sections 25 and 26 further lay down that confession made "to" a police, or while in the police custody cannot be used against the maker. Therefore, requirement of Section 25 of the Evidence Act is that confession made "to" a "police officer" cannot be proved against the maker. This section does not prescribe that if any confession is made "in presence" of the police, then same cannot be used against the maker, particularly, when the maker does not know that any police personnel are present or without taking notice of those persons or in presence makes voluntary confession to the persons other than the police, then in our considered opinion, provisions of Section 25 are not attracted. The only requirement is that the said confession should not be made on asking by the police or on intervention by the police personnel or in answer to the query made by the police officer. For this view, we are fortified by the judgment of the Bombay High Court in the matter of **Alluri Ramayya V. State of Maharashtra** reported in **1987 CRI.L.J. 1172**. In present case, the confession made by the accused was voluntary, as the accused came from village Manipur, without asking by anybody, she was saying that she has committed murder of her daughter-in-law, therefore, confession was voluntary and true for the reason that in pursuance of the confession made by the accused, on being asked by PW-2 Chamra Das, PW-1 Rooplal went to the house of the accused in village Manipur and he found that the dead body of daughter-in-law of the accused was lying in the Varandah of her house, even Narayani daughter of the accused was standing and she disclosed that Nisha Bai daughter-in-law has been murdered by her mother.

15. Second circumstance: As far as this circumstance is concerned, PW-1 Rooplal and PW-2 Chamra Das have stated that Girjabai came near to them saying that she has committed Kand (an untoward incident). They saw that there were blood spots on her face and clothes. Further PW-1 Rooplal has stated that on asking by Kotwar Chamra Das he went on the spot, there he saw that in the Varandah of the house of the accused, the

body of her daughter-in-law Nisha Bai was lying in a pool of blood, there were injuries on her face and head. The blood stained hammer, axe and club were lying on the spot. As per the evidence of PW-9 Ratnesh Mishra, Investigating Officer, clothes of the accused were seized under Ex.-P/5-A, hammer, axe and one club of Babool stained with blood were seized under Ex.-P/6-A. Perusal of the F.S.L. report Ex.-P/21 reveals that Sari (D-1), Blouse (D-2), Saya (D-3), Axe (E), Hammer (F), Club (G) were found stained with blood. Even PW-11 Dr. Yogesh Kumar Sharma has stated that he examined axe & hammer, it was possible to cause injuries with hammer and axe in question which were found on the body of the deceased. The body of the deceased was found in the house of the accused in injured condition. As per the evidence of PW-1 Rooplal, Narayani, daughter of the accused, said that her father has gone to the agricultural field, therefore, it was for the accused to explain as to how her daughter-in-law sustained injuries, which resulted into her death because this was the house of accused, as per the provisions of Section 106 of the Evidence Act, it was within the special knowledge of the accused to explain that how her daughter-in-law sustained injuries in the house. Of course, she has explained that she had gone to the agricultural field, when she returned, she saw Nisha Bai in injured condition, she became unconscious. But, this explanation was false because PW-1 Rooplal and PW-2 Chamra Das, who are independent witnesses, have stated that the accused came all the way to Sarkhor from her village Manipur. She made extra judicial confession before them that she has committed murder of her daughter-in-law. Therefore, she has made false explanation that she was at her agricultural field.

16. Learned counsel for the accused/appellant argued that mental condition of the accused was not perfect and she was behaving like an insane person, as such, she is entitled for the benefit under Section 84 of the I.P.C..

17. In order to attract the provisions of Section 84 of the IPC, it is necessary that it is established that at time of commission of crime, the accused by reason of unsoundness of mind, is incapable of knowing the nature of the act, or that he is doing what is either wrong or contrary to law. As per the provisions of Section 105 of the Evidence Act, burden is on the accused to establish that when crime was committed by her, she was suffering from unsoundness of mind. Section 105 of the Evidence Act

envisages that '*When a person is accused of any offence, the burden of proving the existence of circumstances bringing the case within any of the General Exceptions in the Indian Penal Code, 1860 (45 of 1860) or within any special exception or proviso contained in any other part of the same Code, or in any law defining the offence, is upon him, and the Court shall presume the absence of such circumstances*'. Of course, the basic ingredients of the offence has to be proved by the prosecution. The burden contemplated under Section 105 of the Evidence Act can be discharged by bringing some material on record i.e. by producing documentary evidence, medical evidence, other defence witnesses or by cross-examination of the prosecution witnesses which probabilize the defence raised by the accused that the accused was suffering from unsoundness of mind at the time of commission of crime. In this case, nothing has been placed on record by the accused to show that she was suffering from unsoundness of mind. On the contrary, in her statement under Section 313 of the Cr.P.C., she has taken the plea of alibi that at the time of commission of crime she was at her agricultural field. In cross-examination of the prosecution witnesses the defence has not been able to elicit anything which establishes that the accused was suffering from unsoundness of mind at the time of commission of crime. Even in the cross-examination, PW-9 Ratnesh Mishra, I.O., has categorically stated that mental balance of the accused was all right, therefore, argument of learned counsel for the accused/ appellant that the accused was suffering from unsoundness of mind at the time of commission of crime is not established.

16. In the result, finding of the trial Court does not suffer from illegality or infirmity. The appeal being devoid of merit is liable to be dismissed and it is hereby dismissed.

Sd/-
L.C.BHADOO
Judge

Sd/-
DHIRENDRA MISHRA
Judge

Barve